

March 10, 2004

D.T.E. 03-112

Petition of Boston Edison Company d/b/a NStar Electric for approval by the Department of Telecommunications and Energy, pursuant to G.L. c. 164, §§ 1A, 1G, 76, and 94, of proposed divestiture of property in the City of Newton, Massachusetts.

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FOR: BOSTON EDISON COMPANY d/b/a NSTAR
ELECTRIC
Petitioner

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I. INTRODUCTION

On October 31, 2003, pursuant to G.L. c. 164, §§ 1A, 1G, 76, and 94, and the terms of the restructuring settlement approved by the Department of Telecommunications and Energy (“Department”) in Boston Edison Company, D.P.U./D.T.E. 96-23 (1998) (“Restructuring Settlement”), Boston Edison Company d/b/a NStar Electric (“BECo” or “Company”) filed a petition for approval of an asset divestiture (“Petition”). The Petition concerns the sale of BECo’s interests in land located off Vine and LaGrange Streets, principally in the City of Newton, Massachusetts (“Property”) for \$15.1 million. In its Petition, the Company seeks: (1) approval of the divestiture of the Company’s interest in the Property to Cornerstone Corporation (“Cornerstone”) for \$15.1 million;¹ and (2) approval of the Company’s proposed ratemaking treatment to reduce the variable component of its transition charge by the net proceeds from the sale (Petition at 6). The Company estimates that the net proceeds of the sale are approximately \$14.3 million by reducing the sale price of \$15.1 million by the costs of the sale including: (1) registry fees (\$68,856); (2) closing fees (\$15,000); (3) legal fees (\$150,000); (4) broker fees (\$504,000); and (5) other sales costs (\$110,000) (Exhs. NSTAR-BKR-4; NSTAR-DTE-1-2(d)). This matter was docketed as D.T.E. 03-112.

¹ Cornerstone is a Massachusetts corporation (Exh. NSTAR-BKR-2, at 2). In limited partnership with the City of Newton, Massachusetts (“Newton”), Cornerstone will acquire the Property pursuant to the terms of the purchase and sale agreement (Petition at 3, citing Exhs. NSTAR-BKR-2; NSTAR-BKR-1, at 2). Newton is a co-signatory to the agreement for the sole purpose of acknowledging to BECo that it has a separate agreement with Cornerstone, under which Cornerstone may request the Company to issue a deed for portions of the property to Newton directly, in exchange for a portion of the purchase price to be paid by Newton (Exh. NSTAR-BKR-1, at 10, citing Exh. NSTAR-BKR-2, at §§ C, 7.2.1, and 16).

Pursuant to notice duly issued, the Department held a public hearing and procedural conference on December 3, 2003. The Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention pursuant to G.L. c. 12, § 11E. An evidentiary hearing was held on January 14, 2004. In support of its petition, the Company sponsored the testimony of (1) Stephen J. Carroll, real estate manager for BECo’s parent company, NSTAR Electric and Gas Corporation (“NSTAR”), and (2) Bryant K. Robinson, principal revenue requirements analyst with NSTAR. The evidentiary record contains 60 exhibits. The Company filed its brief on January 28, 2004 (“Company Brief”). The Attorney General indicated that he did not identify any issues requiring comment and that he would not submit a brief (Letter from Attorney General in lieu of Brief, January 28, 2004).

II. DESCRIPTION OF THE PROPOSED DIVESTITURE

A. Divestiture of the Property

The Property consists of two parcels of vacant land, totaling 42.36 acres (Exh. NSTAR-BKR-1 (Supp.) at 4-5). The “north” parcel is approximately 33.48 acres located entirely in Newton and the “south” parcel is approximately 8.88 acres located primarily in Newton, with approximately 444 square feet located within the City of Boston

(“Boston”) (id.).² The Company marketed the Property using both direct and indirect solicitations, including mass electronic mailings, newspaper advertisements, flyers, and direct correspondence via the Internet (Exhs. NSTAR-BKR-1 (Supp.) at 5; NSTAR-BKR-3(a) through (d)). The Company’s marketing materials directed the recipient to a website dedicated solely to information regarding the Property (Exh. NSTAR-BKR-1 (Supp.) at 6).

Approximately 400 individuals and organizations registered on the website to receive the posted information regarding the sale of the Property (id. at 5-6).³ Additionally, for those interested parties with questions regarding the Property and sale process, the marketing materials and the website provided contact information for the Company’s broker (id.).

² The north parcel is more particularly described as Lot E on the plan dated January 21, 1965, recorded with the Middlesex South Registry of Deeds in Book 11363, Page 245. The deed references to said lot are (1) deed of V. George Badoian, as Trustee of American Land and Building Trust, and individually, to BECo dated September 14, 1973, recorded with the Middlesex South Registry of Deeds in Book 12521, Page 266, and (2) excluding Lot E-2 conveyed by deed of BECo to Herbert Rosen dated November 17, 1995, recorded with the Middlesex South Registry of Deeds in Book 25828, Page 366 (Exh. NSTAR-BKR-2, at 20).

The south parcel is more particularly described as Lot C and Lot D on the plan dated January 21, 1965, recorded with the Middlesex South Registry of Deeds in Book 11363, Page 245 and Lot A on the plan dated January 21, 1965, recorded with the Suffolk County Registry of Deeds in Book 8135, Page 468. The deed references to said lots are (1) deed of V. George Badoian, as Trustee of American Land and Building Trust, and individually, to BECo dated September 14, 1973, recorded with the Middlesex South Registry of deeds in Book 12521, Page 266, and (2) deed of V. George Badoian, as Trustee of American Land and Building Trust, and individually, to BECo dated September 14, 1973, recorded with the Suffolk County Registry of Deeds in Book 8659, Page 652 (id. at 21).

³ The information was contained in three documents: (1) an offering memorandum; (2) a draft purchase and sale agreement; and (3) a site development report (Exhs. NSTAR-BKR-1 (Supp.) at 6; NSTAR-BKR-3(a)).

The Property was offered for sale through a sealed bid auction process (Exh. NSTAR-BKR-1 (Supp.) at 6; Tr. at 41). Bids were to be submitted under the assumption that no significant changes would be made to the purchase and sale agreement and that the Property would be sold “as is” (Exhs. NSTAR-BKR-1 (Supp.) at 6; NSTAR-BKR-3(a) at 10). Bids were originally due on February 21, 2003, however the Company extended the deadline to June 20, 2003 at Newton’s request (Exh. NSTAR-BKR-1 (Supp.) at 7).

BECo received eight offers for the Property, four of which the Company found to be “conforming” (Exhs. NSTAR-AG 1-1; NSTAR-AG 1-1(a) through (h)(Att); Tr. at 12).⁴ At the close of bidding, the Company attempted to execute a purchase and sale agreement with the highest bidder (Exh. NSTAR-DTE 1-4; Tr. at 15-16). During negotiations, the winning bidder declined to sign a purchase and sale agreement because of concerns relating to due diligence and environmental matters (Exhs. NSTAR-DTE 1-4; NSTAR-DTE 1-6(g)(Att); Tr. at 15-17).

The Company considered three options to proceed with the divestiture following the failure of negotiations: (1) to begin negotiations with the second highest bidder; (2) to reopen bidding to all first round bidders; and (3) to reopen bidding to a subset of the first round bidders (Exh. NSTAR-DTE 1-4). Based upon its experience with generation asset divestitures, the Company concluded that opening a second round of bidding with a subset of first-round bidders would give participants an incentive to increase their prior bids, maximizing the value

⁴ Bids submitted without additional conditions added to the purchase and sale agreement posted by the Company on the dedicated website were considered “conforming” (Exhs. NSTAR-AG 1-6(a)(ATT); NSTAR-AG 1-7).

of the property (Exh. NSTAR-DTE 1-4; Tr. at 30-31). The two highest conforming bidders from the first round were the only parties allowed to participate in the second round of bidding (Exh. NSTAR-DTE 1-4; Tr. at 30).⁵ Cornerstone submitted the highest bid of \$15.1 million in the second round and subsequently executed a purchase and sale agreement with the Company (Exh. NSTAR-BKR-1 (Supp.) at 9-10).

BECo argues that the divestiture process provided equal access to information regarding the Property and the bid schedule to all potential buyers (Tr. at 40-41). In addition, BECo argues that the divestiture process was open and competitive and that it maximized the value of the Property as well as maximizing the mitigation of the Company's transition costs (Exh. NSTAR-BKR-1 (Supp.) at 3-4, 8-9; Tr. at 52-53; Company Brief at 4).

B. Ratemaking Treatment of Gain on Sale

BECo proposes to return net proceeds gained from the sale of the Property to customers via the variable component of the Company's transition charge (Exh. NSTAR-DTE-1-2). BECo maintains that the Department has previously determined that net proceeds gained from the sale of an asset are to be returned to customers through the fixed component of a company's transition charge only to the extent that those same asset-related costs had previously been included in the fixed component (Exh. NSTAR-DTE 1-2, citing Cambridge Electric Light Company, D.T.E. 02-76 (2002), Commonwealth Electric Company,

⁵ BECo limited the second round bidding to include only those bidders who had submitted conforming bids and were close to the Company's price expectations for the Property during the first round of bids (Exhs. NSTAR-DTE-1-4; NSTAR-AG 1-3(b)(Att); NSTAR-AG-1-6(a)(ATT); Tr. 1, at 24).

D.T.E. 03-69 (2004)). The book value of the Property was included as a component in calculating the fixed component of the Company's transition charge, pursuant to the Restructuring Settlement (see D.P.U./D.T.E. 96-23; D.T.E. 99-107). However, the Company argues that at the time of the Company's securitization of its fixed costs in 1999, the book value of the Property that had not already been collected through the fixed component of the transition charge was transferred to the variable component of the transition charge and, therefore, the costs associated with the Property have been paid for by customers through the variable portion of the transition charge (Exh. NSTAR-DTE 1-2; Tr. at 76). Accordingly, the Company argues that its proposal to return the net proceeds of the sale to customers through the variable component is consistent with Department precedent (Exh NSTAR-DTE-1-2; Company Brief at 7-8, 9-10).

In addition, prior to Department approval of BECo's Restructuring Settlement, the Property was treated as non-utility land (Tr. at 71-72).⁶ The Company purchased the Property for non-utility purposes in 1973 and has not used the Property for utility purposes at any time since its purchase (Exh. NSTAR-DTE-1-1). However, as part of its Restructuring Settlement, the Company agreed to sell the Property and use the above-market proceeds to mitigate transition costs (Tr. at 72; Company Brief at 8). Specifically, the Restructuring Settlement requires (1) that costs associated with the Property are to be treated as a component of the

⁶ Typically, non-utility property is property (1) that has not been included in a rate case proceeding before the Department, and (2) where the book value has not been paid for by ratepayers (Tr. at 71-72). When non-utility property is sold, the benefit of the sale goes directly to the shareholders (id.).

Company's transition charge, and (2) that net proceeds of any subsequent sale are to be returned to ratepayers through the transition charge (Exh. NSTAR-DTE-1-2; Tr. at 71-72; Company Brief at 8-9).

BECO contends that its proposed ratemaking treatment of the net proceeds is consistent with how it has treated the Property's costs following the approval of its Restructuring Settlement (Exh. NSTAR-DTE-1-2; Tr. at 76; Company Brief at 9). According to the Company, the book value of the Property not already collected through the fixed component of the transition charge was included in the variable component of the transition charge (Tr. at 76; Company Brief at 9). The Company notes that customers have since paid for the book value of the Property through the variable component (*id.*). Finally, the Company asserts that flowing the net proceeds back to customers in one year through the variable component of the transition charge provides significant savings to customers by avoiding interest charges associated with transition cost deferrals (Exhs. NSTAR-BKR-1 (Supp.) at 12-13; NSTAR-DTE-1-2; Tr. at 74-75; Company Brief at 10).

III. ANALYSIS AND FINDINGS

A. Divestiture of Property

When reviewing a company's proposal to divest its generating units, the Department considers the consistency of the proposed transaction with the company's restructuring plan, or in some cases the company's restructuring settlement and the Restructuring Act, St. 1997, c. 164. Cambridge Electric Light Company, D.T.E. 02-76, at 7 (2003). A divestiture transaction will be determined to be consistent with the Restructuring Act if the company

demonstrates to the Department that the “sale process is equitable and maximizes the value of the existing generation facilities being sold.” G.L. c. 164, § 1A(b)(1). Although the Petition is for the sale of a non-utility asset, to be consistent with the Company’s Restructuring Settlement a similar showing should be made, namely that: (1) the sale process was equitable, and (2) the process maximized the value of the asset being sold, given the condition of the market for the property in question at the time a binding agreement is struck. The Department has found a sale process to be both equitable and structured to maximize the value of the assets sold if the company establishes that it used a “competitive auction or sale” that ensured “complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale.” New England Power Company, D.T.E. 02-33 (2002) at 4.

The Company worked with its real estate broker to market the Property locally, nationally, and internationally through a variety of means including the Internet (Exh. NSTAR-BKR-1 (Supp.) at 6). The Company has established that the divestiture process provided equal access to information regarding the Property and the bid schedule to all potential buyers (Tr. at 40-41). Therefore, the Department finds that the sale process used by BECo was equitable.

The sale price of \$15.1 million (subject to certain adjustments at closing) for 42 acres amounts to approximately \$360,000 per acre (Exhs. NSTAR-BKR-1 (Supp.) at 2-5; AG-1-3, Att. (a)). According to an analysis performed by the Company’s real estate broker in November 2000, residential homes near the Property had sold for approximately \$900,000 to

\$1,400,000, with land generally representing 25 to 40 percent of the total sale price of a residential home (Exh. AG-1-3, Att. (a)). Based on the sale and the development expenses associated with a 64 lot single-family home subdivision, the Company's real estate broker valued the Property at approximately \$15 million (Exh. AG-1-3, Att. (b)). Therefore, the sale price of the Property compares favorably to current market prices in the Newton area.⁷ The sale price of the Property also represents a substantial premium over the book value of the assets being transferred (Exhs. NSTAR-BKR-1 (Supp.) at 3; AG-1-3, Att. (a)). Therefore, the Department finds that the sale process used by the Company fairly tested the market value and was structured to maximize the value of the asset being sold.

B. Ratemaking Treatment of the Gain on Sale

An approved transition charge recovers the above-market costs of generation-related investments and obligations that utilities have incurred in providing service to their customers under traditional utility regulation. G.L. c. 164, § 1G(d)(1). This divestiture will reduce the total amount of transition costs to be recovered through transition charges from the levels approved by the Department most recently in Boston Edison Company, 02-80-A (2003).

The Department-approved Restructuring Settlement required the Company to sell the Property and credit the net proceeds to customers through the fixed component of the transition charge (Exh. NSTAR-DTE-1-2; Tr. at 72; see also D.P.U./D.T.E. 96-23, at Att. 3,

⁷ The Department recognizes that it is difficult to compare the results of sales of assets because of differences in type and differences in the terms of the transactions. Nonetheless, such comparisons are helpful as factors in determining whether the sale value of the assets has been maximized. See D.T.E. 02-76, at 8.

§ 1.1(a)(vii)). In order for BECo's customers to receive the benefits of the value of this non-utility property, the Company needed to account for the Property as if it were utility property (Exh. NSTAR-DTE-1-2). Accordingly, consistent with Department precedent regarding the accounting for the sale of utility property, the Restructuring Settlement provided (1) that the net book value of the Property would be included in the fixed component of the transition charge, and (2) that, when the property was eventually sold, the net proceeds would be included in the residual variable component to mitigate the Company's transition charge (Exh. NSTAR-DTE-1-2). At the time of the Company's securitization of its fixed costs in 1999, the book value of the Property was transferred to the variable portion of the transition charge and it has since been paid for by customers through the variable portion of the transition charge (Exh. NSTAR-DTE-1-2; Tr. at 76). This treatment of the Property's costs was consistent with the settlement approved in Boston Edison Company, D.T.E. 99-107 (Exh. NSTAR-DTE-1-2; Tr. at 77).

When considering the appropriate ratemaking treatment of the proceeds of this sale, the Department must ensure that the Company has taken "all reasonable steps to mitigate to the maximum extent possible the total amount of transition costs that will be recovered and to minimize the impact of recovery of such transition costs on ratepayers in the commonwealth." G.L. c. 164, § 1G(d)(1). Typically the fixed component of a company's transition charge carries a higher interest rate than the variable component. Therefore, to satisfy the Restructuring Act's direction for maximum mitigation, the Department takes into consideration the carrying charges that ratepayers have borne for the divested asset in determining how best

to flow back the proceeds to ratepayers (i.e., whether to apply the proceeds as a credit to the fixed or the variable component of the transition charge).⁸ D.T.E. 02-76, at 9-10.

In the instant proceeding, the carrying costs for the fixed component and variable component are both at the same rate -- BECo's weighted cost of capital. Because in this instance the interest rates are the same, flowing all of the net proceeds through the variable component of the transition charge mitigates BECo's total transition costs in a manner that symmetrically considers the carrying costs borne by ratepayers. Accordingly, the Department

⁸ In 2001, Cambridge Electric Light Company ("Cambridge") proposed to return all net proceeds from the divestiture of Blackstone Station to customers through the variable component of its transition charge, even though the transition costs for Blackstone Station were recovered from ratepayers through the fixed component of its transition charge. Cambridge's carrying cost for the fixed component is its weighted cost of capital, which is higher than the carrying cost for the variable component -- Cambridge's customer deposit rate. D.T.E. 02-76, at 10, n.5. In approving the divestiture, the Department modified the Company's proposed ratemaking treatment, stating:

To date, the Company has recovered the transition cost for Blackstone through the fixed component. Accordingly, flowing back all of the net proceeds of the divestiture through the variable component would not satisfy the [Restructuring] Act's direction. Ratepayers have been paying for this generating asset through the fixed component, not through the variable component. Further, the Department notes that these payments have occurred since the effective date of the Company's restructuring plan, March 1, 1998. Therefore, satisfying the [Restructuring] Act requires that the Company's proposal be modified. The Company must return the proceeds in a manner that symmetrically mitigates total transition costs, taking into consideration the carrying charges that ratepayers have borne to date for Blackstone Station.

Id. at 10.

approves the Company's proposal to return all of the net proceeds from the divestiture of the Property through the variable component of its transition charge.

IV. ORDER

After notice, hearing, and consideration, it is

ORDERED: That the Petition of Boston Edison Company d/b/a NStar Electric for approval of the sale of Boston Edison's interests in the land located off Vine and LaGrange Streets principally in the City of Newton, Massachusetts, to Cornerstone Corporation for \$15.1 million is APPROVED; and it is

FURTHER ORDERED: That the Company's proposed ratemaking treatment to apply the net proceeds of the sale to reduce its transition charge is APPROVED; and it is

FURTHER ORDERED: That the Company shall submit in its next transition cost reconciliation filing a final accounting of the transaction reflecting a reconciliation of the actual net proceeds of the sale consistent with all directives in this Order; and it is

FURTHER ORDERED: That the Company shall comply with all other directives contained in this Order.

By Order of the Department,

/s/
Paul G. Afonso, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Eugene J. Sullivan, Jr., Commissioner

/s/
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971.